

Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 342

HOUSE BILL 2402

AN ACT

AMENDING SECTIONS 33-1256 AND 33-1807, ARIZONA REVISED STATUTES; RELATING TO
PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-1256, Arizona Revised Statutes, is amended to
3 read:

4 33-1256. Lien for assessments; priority; mechanics' and
5 materialmen's liens

6 A. The association has a lien on a unit for any assessment levied
7 against that unit ~~or monetary penalties imposed against its unit owner from~~
8 the time the assessment ~~or penalty~~ becomes due. The association's lien FOR
9 ASSESSMENTS, FOR CHARGES FOR LATE PAYMENT OF THOSE ASSESSMENTS AND FOR
10 REASONABLE ATTORNEY FEES AND COSTS INCURRED WITH RESPECT TO THOSE ASSESSMENTS
11 may be foreclosed in the same manner as a mortgage on real estate. ~~Unless~~
12 ~~the declaration otherwise provides,~~ fees, charges, late charges, monetary
13 penalties and interest charged pursuant to section 33-1242, ~~subsection A,~~
14 paragraphs 10, 11 and 12, OTHER THAN CHARGES FOR LATE PAYMENT OF ASSESSMENTS,
15 are NOT enforceable as assessments under this section. If an assessment is
16 payable in installments, the full amount of the assessment is a lien from the
17 time the first installment of the assessment becomes due. THE ASSOCIATION
18 HAS A LIEN FOR FEES, CHARGES, LATE CHARGES, OTHER THAN CHARGES FOR LATE
19 PAYMENT OF ASSESSMENTS, MONETARY PENALTIES OR INTEREST CHARGED PURSUANT TO
20 SECTION 33-1242, PARAGRAPHS 10, 11 AND 12 AFTER THE ENTRY OF A JUDGMENT IN
21 A CIVIL SUIT FOR THOSE FEES, CHARGES, LATE CHARGES, MONETARY PENALTIES OR
22 INTEREST FROM A COURT OF COMPETENT JURISDICTION AND THE RECORDING OF THAT
23 JUDGMENT IN THE OFFICE OF THE COUNTY RECORDER AS OTHERWISE PROVIDED BY LAW.
24 THE ASSOCIATION'S LIEN FOR MONIES OTHER THAN FOR ASSESSMENTS, FOR CHARGES FOR
25 LATE PAYMENT OF THOSE ASSESSMENTS AND FOR REASONABLE ATTORNEY FEES AND COSTS
26 INCURRED WITH RESPECT TO THOSE ASSESSMENTS MAY NOT BE FORECLOSED AND IS
27 EFFECTIVE ONLY ON CONVEYANCE OF ANY INTEREST IN THE REAL PROPERTY. NOTHING
28 IN THIS SUBSECTION OR SUBSECTION E OF THIS SECTION SHALL BE INTERPRETED TO
29 RESTRICT AN ASSOCIATION FOR A TIMESHARE PLAN AS DEFINED BY SECTION 32-2197
30 FROM ACQUIRING OR FORECLOSING ON A LIEN, WHETHER THE LIEN IS FOR ASSESSMENTS,
31 FEES, CHARGES, LATE CHARGES, MONETARY PENALTIES OR INTEREST CHARGED PURSUANT
32 TO SECTION 33-1242, PARAGRAPHS 10, 11 AND 12 AND ANY LIEN SHALL BE A FIRST
33 LIEN AS PROVIDED IN SUBSECTION B OF THIS SECTION. AN ASSOCIATION FOR A
34 TIMESHARE PLAN MAY FORECLOSE ON A LIEN AT ANY TIME AFTER THE LIEN IS
35 ACQUIRED.

36 B. A lien FOR ASSESSMENTS, FOR CHARGES FOR LATE PAYMENT OF THOSE
37 ASSESSMENTS AND FOR REASONABLE ATTORNEY FEES AND COSTS INCURRED WITH RESPECT
38 TO THOSE ASSESSMENTS under this section is prior to all other liens,
39 interests and encumbrances on a unit except:

40 1. Liens and encumbrances recorded before the recordation of the
41 declaration.

42 2. A recorded first mortgage on the unit, A seller's interest in a
43 first contract for sale pursuant to chapter 6, article 3 of this title on the
44 unit recorded prior to the lien arising pursuant to subsection A of this
45 section or a recorded first deed of trust on the unit.

1 3. Liens for real estate taxes and other governmental assessments or
2 charges against the unit.

3 C. Subsection B of this section does not affect the priority of
4 mechanics' or materialmen's liens or the priority of liens for other
5 assessments made by the association. The lien under this section is not
6 subject to the provisions of chapter 8 of this title.

7 D. Unless the declaration otherwise provides, if two or more
8 associations have liens for assessments created at any time on the same real
9 estate, those liens have equal priority.

10 E. Recording of the declaration constitutes record notice and
11 perfection of the lien FOR ASSESSMENTS, FOR CHARGES FOR LATE PAYMENT OF THOSE
12 ASSESSMENTS AND FOR REASONABLE ATTORNEY FEES AND COSTS INCURRED WITH RESPECT
13 TO THOSE ASSESSMENTS. Further recordation of any claim of lien for
14 assessment ASSESSMENTS under this section is not required.

15 F. A lien for unpaid assessments is extinguished unless proceedings
16 to enforce the lien are instituted within three years after the full amount
17 of the assessments becomes due.

18 G. This section does not prohibit actions to recover sums for which
19 subsection A of this section creates a lien or does not prohibit an
20 association from taking a deed in lieu of foreclosure.

21 H. A judgment or decree in any action brought under this section shall
22 include costs and reasonable attorney fees for the prevailing party.

23 I. The association on written request shall furnish to a lienholder,
24 unit owner or person designated by a unit owner a statement setting forth the
25 amount of unpaid assessments against the unit. The statement shall be
26 furnished within fifteen days after receipt of the request and the statement
27 is binding on the association, the board of directors and every unit owner
28 if the statement is requested by an escrow agency that is licensed pursuant
29 to title 6, chapter 7. Failure to provide the statement to the escrow agent
30 within the time provided for in this subsection shall extinguish any lien for
31 any unpaid assessment then due.

32 Sec. 2. Section 33-1807, Arizona Revised Statutes, is amended to read:

33 33-1807. Lien for assessments; priority; mechanics' and
34 materialmen's liens

35 A. The association has a lien on a unit for any assessment levied
36 against that unit ~~or monetary penalties imposed against its unit owner from~~
37 ~~the time the assessment or penalty becomes due.~~ The association's lien FOR
38 ASSESSMENTS, FOR CHARGES FOR LATE PAYMENT OF THOSE ASSESSMENTS AND FOR
39 REASONABLE ATTORNEY FEES AND COSTS INCURRED WITH RESPECT TO THOSE ASSESSMENTS
40 may be foreclosed in the same manner as a mortgage on real estate ~~unless the~~
41 ~~declaration otherwise provides,~~ fees, charges, late charges, monetary
42 penalties and interest charged pursuant to section 33-1803, OTHER THAN
43 CHARGES FOR LATE PAYMENT OF ASSESSMENTS are NOT enforceable as assessments
44 under this section. If an assessment is payable in installments, the full
45 amount of the assessment is a lien from the time the first installment of the

1 assessment becomes due. THE ASSOCIATION HAS A LIEN FOR FEES, CHARGES, LATE
2 CHARGES, OTHER THAN CHARGES FOR LATE PAYMENT OF ASSESSMENTS, MONETARY
3 PENALTIES OR INTEREST CHARGED PURSUANT TO SECTION 33-1803 AFTER THE ENTRY OF
4 A JUDGMENT IN A CIVIL SUIT FOR THOSE FEES, CHARGES, LATE CHARGES, MONETARY
5 PENALTIES OR INTEREST FROM A COURT OF COMPETENT JURISDICTION AND THE
6 RECORDING OF THAT JUDGMENT IN THE OFFICE OF THE COUNTY RECORDER AS OTHERWISE
7 PROVIDED BY LAW. THE ASSOCIATION'S LIEN FOR MONIES OTHER THAN FOR
8 ASSESSMENTS, FOR CHARGES FOR LATE PAYMENT OF THOSE ASSESSMENTS AND FOR
9 REASONABLE ATTORNEY FEES AND COSTS INCURRED WITH RESPECT TO THOSE ASSESSMENTS
10 MAY NOT BE FORECLOSED AND IS EFFECTIVE ONLY ON CONVEYANCE OF ANY INTEREST IN
11 THE REAL PROPERTY. NOTHING IN THIS SUBSECTION OR SUBSECTION E OF THIS
12 SECTION SHALL BE INTERPRETED TO RESTRICT AN ASSOCIATION FOR A TIMESHARE PLAN
13 UNDER SECTION 32-2197 FROM ACQUIRING OR FORECLOSING ON A LIEN, WHETHER THE
14 LIEN IS FOR ASSESSMENTS, FEES, CHARGES, LATE CHARGES, MONETARY PENALTIES OR
15 INTEREST CHARGED PURSUANT TO SECTION 33-1803 AND ANY LIEN SHALL BE A FIRST
16 LIEN AS PROVIDED IN SUBSECTION B OF THIS SECTION. AN ASSOCIATION FOR A
17 TIMESHARE PLAN UNDER SECTION 32-2197 MAY FORECLOSE ON A LIEN AT ANY TIME
18 AFTER THE LIEN IS ACQUIRED.

19 B. A lien FOR ASSESSMENTS, FOR CHARGES FOR LATE PAYMENT OF THOSE
20 ASSESSMENTS AND FOR REASONABLE ATTORNEY FEES AND COSTS INCURRED WITH RESPECT
21 TO THOSE ASSESSMENTS under this section is prior to all other liens,
22 interests and encumbrances on a unit except:

23 1. Liens and encumbrances recorded before the recordation of the
24 declaration.

25 2. A recorded first mortgage on the unit, A seller's interest in a
26 first contract for sale pursuant to chapter 6, article 3 of this title on the
27 unit recorded prior to the lien arising pursuant to subsection A of this
28 section or a recorded first deed of trust on the unit.

29 3. Liens for real estate taxes and other governmental assessments or
30 charges against the unit.

31 C. Subsection B of this section does not affect the priority of
32 mechanics' or materialmen's liens or the priority of liens for other
33 assessments made by the association. The lien under this section is not
34 subject to chapter 8 of this title.

35 D. Unless the declaration otherwise provides, if two or more
36 associations have liens for assessments created at any time on the same real
37 estate those liens have equal priority.

38 E. Recording of the declaration constitutes record notice and
39 perfection of the lien FOR ASSESSMENTS, FOR CHARGES FOR LATE PAYMENT OF
40 ASSESSMENTS AND FOR REASONABLE ATTORNEY FEES AND COSTS INCURRED WITH RESPECT
41 TO THOSE ASSESSMENTS. Further recordation of any claim of lien for
42 assessment ASSESSMENTS under this section is not required.

43 F. A lien for an unpaid assessment is extinguished unless proceedings
44 to enforce the lien are instituted within three years after the full amount
45 of the assessment becomes due.

1 G. This section does not prohibit:

2 1. Actions to recover amounts for which subsection A of this section
3 creates a lien.

4 2. An association from taking a deed in lieu of foreclosure.

5 H. A judgment or decree in any action brought under this section shall
6 include costs and reasonable attorney fees for the prevailing party.

7 I. On written request, the association shall furnish to a lienholder,
8 unit owner or person designated by a unit owner a statement setting forth the
9 amount of any unpaid assessment against the unit. The association shall
10 furnish the statement within fifteen days after receipt of the request, and
11 the statement is binding on the association, the board of directors and every
12 unit owner if the statement is requested by an escrow agency that is licensed
13 pursuant to title 6, chapter 7. Failure to provide the statement to the
14 escrow agent within the time provided for in this subsection shall extinguish
15 any lien for any unpaid assessment then due.

APPROVED BY THE GOVERNOR JUNE 7, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 7, 2004.

Passed the House March 8, 2004,

by the following vote: 44 Ayes,

14 Nays, 2 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate May 20, 2004
on Reconciliation

by the following vote: 25 Ayes,

3 Nays, 2 Not Voting

Ken Bennett
President of the Senate

Charmine Ballington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

H.B. 2402

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 25, 2004,

by the following vote: 48 Ayes,

9 Nays, 3 Not Voting

Jake Flake
Speaker of the House
Speman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

25th day of May, 2004,

at 4:20 o'clock p. M.

Wendy Uparra
Secretary to the Governor

Approved this 7 day of

June, 2004,

at 11^h o'clock A. M.

J. R. R. R.
Governor of Arizona

H.B. 2402

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 7 day of June, 2004,

at 4:32 o'clock M.

James K. Brewer
Secretary of State